



DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Stephen E. Van Noy, P.A.; Decision and Order

On March 24, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Stephen E. Van Noy, P.A. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. MV2612681 at the registered address of 2101 Box Butte Avenue, Alliance, Nebraska 69301. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is "currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the state of Nebraska, the state in which [he is] registered with DEA." *Id.* at 1-2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of his right to file with DEA a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* at 2 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 1, 2.¹ "A default, unless excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC]." 21 CFR 1301.43(e).

Further, "[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 C.F.R.] § 1316.67." *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f). *See also id.* § 1316.67.

¹ Based on the Government's submissions in its RFAA dated August 2, 2023, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the included Declaration of a DEA Diversion Investigator asserts that on March 30, 2023, Registrant was served with the OSC at his registered address via certified mail. RFAAX 2, at 1.

FINDINGS OF FACT

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, on October 1, 2022, the Nebraska Department of Health and Human Services revoked Registrant's Nebraska physician assistant license. RFAAX 1, at 1.

According to Nebraska's online records, of which the Agency takes official notice, Registrant's Nebraska physician assistant license remains revoked.² Nebraska Department of Health and Human Services License Information System Search, <https://www.nebraska.gov/LISSearch/search.cgi> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice as a physician assistant in Nebraska, the state in which he is registered with DEA.

DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, D.O.*, 76 FR 71371 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, D.O.*, 43 FR 27616, 27617 (1978).³

² Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to DEA Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

³ This rule derives from the text of two provisions of the Controlled Substances Act (CSA). First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a

According to Nebraska statute, “[d]ispense means to deliver a controlled substance to an ultimate user or a research subject pursuant to a medical order issued by a practitioner authorized to prescribe, including the packaging, labeling, or compounding necessary to prepare the controlled substance for such delivery.” Neb. Rev. Stat. section 28-401(8) (2023). Further, a “[p]ractitioner means a physician, a physician assistant . . . or any other person licensed, registered, or otherwise permitted to distribute, dispense, prescribe, conduct research with respect to, or administer a controlled substance in the course of practice or research in this state.” *Id.* Section 28-401(21).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice as a physician assistant in Nebraska. As discussed above, a physician assistant must be a licensed practitioner to dispense a controlled substance in Nebraska. Thus, because Registrant lacks authority to practice as a physician assistant in Nebraska and, therefore, is not authorized to handle controlled substances in Nebraska, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant’s DEA registration be revoked.

ORDER

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. MV2612681 issued to Stephen E. Van Noy, P.A. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Stephen E. Van Noy, P.A., to renew or modify this registration, as well as any other pending application of Stephen E. Van Noy, P.A.,

practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(g)(1) (this section, formerly section 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Pub. L. No. 117-215, 136 Stat. 2257 (2022)). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR at 71371-72; *Sheran Arden Yeates, D.O.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.*, 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton*, 43 FR at 27617.

for additional registration in Nebraska. This Order is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

SIGNING AUTHORITY

This document of the Drug Enforcement Administration was signed on October 20, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Heather Achbach,

Federal Register Liaison Officer,

Drug Enforcement Administration.

[FR Doc. 2023-23955 Filed: 10/30/2023 8:45 am; Publication Date: 10/31/2023]